



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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July 19, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M130843

Claimants: David A. and Betty A. Holland

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Final Staff Report and Recommendation of the Department of Land Conservation and Development, and the Final Order.

This Final Staff Report and Recommendation and the Final Order constitute the final decision on this claim. No further action will be taken on this matter.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M130843
(BALLOT MEASURE 37) OF)
David A. Holland and Betty A. Holland, CLAIMANTS)

Claimants: David A. Holland and Betty A. Holland (the Claimants)

Property: Township 5N, Range 10W, Section 30DD, Tax lot 905
City of Cannon Beach (the property)

Claim: The demand for compensation and any supporting information received
from the Claimants by the State of Oregon (the Claim).


Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this order.

ORDER


The Claim is denied as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report.

This Order is entered by the Deputy Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR chapter 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR chapter 125, division 145, and ORS chapter 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:
Lane Shetterly, Director


Cora R. Parker, Deputy Director
DLCD
Dated this 19th day of July, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


Janice K. Dean, SSID Administrator
DAS, State Services Division
Dated this 19th day of July, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation

July 19, 2007

STATE CLAIM NUMBER: M130843

NAMES OF CLAIMANTS: David A. Holland
Betty A. Holland

MAILING ADDRESS: 3915 SW Dosch Road
Portland, Oregon 97239

PROPERTY IDENTIFICATION: Township 5N, Range 10W, Section 30DD
Tax lot 905
City of Cannon Beach

OTHER CONTACT INFORMATION: Donald Joe Willis
Schwabe, Williamson & Wyatt
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204

DATE RECEIVED BY DAS: November 17, 2006

DEADLINE FOR FINAL ACTION:¹ May 10, 2008

I. SUMMARY OF CLAIM

The claimants, David and Betty Holland, seek compensation in the amount of \$3,432,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 4.01-acre subject property into 20 lots for residential development, and to extend streets and utilities to serve the development. The subject property is located immediately east of the intersection of Hemlock Street and View Point Terrace, within the City of Cannon Beach, in Clatsop County. (See claim.)

¹ ORS 197.352, as originally enacted, required that final action on claims made under Measure 37 be made within 180 days of the date the claim was filed. In response to the large volume of claims filed in late 2006, the Oregon legislature passed House Bill 3546, which became effective on May 10, 2007. This legislation increased the amount of time state and local governments have to take final action on Measure 37 claims filed on or after November 1, 2006, by 360 days, to a total of 540 days.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is not valid because neither the Land Conservation and Development Commission (the Commission) nor the department has enforced laws that restrict the claimants' desired use of the subject property. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 5, 2007, pursuant to Oregon Administrative Rule (OAR) 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, seven written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on November 17, 2006, for processing under OAR 125, division 145. The claim specifically identifies ORS 92, 125-145, 197, 209.250(4) and 227 and OAR 660-015-0010 and includes a copy of a list of other regulations as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimants, David and Betty Holland, acquired the subject property on September 15, 1973, as reflected by a land sale contract and a September 24, 1984, fulfillment warranty deed included with the claim. The Clatsop County Assessor’s Office confirms the claimants’ current ownership of the subject property.

Conclusions

The claimants, David and Betty Holland, are “owners” of the subject property as that term is defined in ORS 197.352(11)(C), as of September 15, 1973.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the subject property into 20 lots for residential development and to extend streets and utilities to serve the development, and that current land use regulations prevent the desired use.²

The subject property is currently zoned by the City of Cannon Beach as RL (Low Density Residential) with a minimum lot size of 10,000 square feet. The subject property is within the City of Cannon Beach’s city limits and Urban Growth Boundary (UGB).

² The claim also includes a copy of a list of numerous land use regulations that purportedly were not in effect when the claimants acquired the property but does not establish how any of the regulations included on that list are either applicable or restrict the claimants’ desired use of the property.

In general, the zoning of a particular property within a UGB is determined by the city or county with land use jurisdiction over the property. In some circumstances, the Commission's rules or state statutes may apply to a local government decision regarding zoning, but usually, within a UGB, state laws require or encourage a higher intensity of development rather than restrict the use of real property. In this case, the claimants have not alleged how a specific state land use regulation restricts their desired use of the subject property with the effect of reducing the fair market value of that real property.

Based on the information in the claim, the department has not identified any state laws that restrict the claimants' desired use of the subject property.

Conclusions

The claim does not establish any state laws that currently restrict the use of the claimants' property. Because the subject property is located within the City of Cannon Beach's city limits and UGB, in general, neither the Commission nor the department enforces laws that require specific zoning of the property. Based on the record before the department, neither the Commission nor the department enforces any laws that restrict the claimants' desired use of the subject property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulations (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

As explained in Section V.(2) of this report, David and Betty Holland have not established that any state land use regulations restrict their desired use of the subject property. Accordingly, the department cannot determine that any laws enforced by the Commission or the department have had the effect of reducing the fair market value of the subject property.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

As explained in Section V.(2) of this report, David and Betty Holland have not established that any state land use regulations restrict the use of the subject property. Accordingly, the department cannot determine that any exemptions under ORS 197.352(3) apply to this claim.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the

department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the record for this claim and the desired use as described by the claimants, the claimants have not established that any state laws enforced by the Commission or the department restrict their desired use of the subject property, with the effect of reducing the fair market value of the subject property. Because the subject property is located within the City of Cannon Beach's city limits and UGB, in general, neither the Commission nor the department enforces laws that require specific zoning of the property.

This report addresses only those state laws that are identified in the claim or that the department is certain apply to the property based on the use that the claimants have identified. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that when the claimants make a more specific proposal to the city to use the property in a particular manner, there may be additional laws that will later be determined to apply to the claimants' use of the subject property.

Conclusions

Based on the record before the department, David and Betty Holland have not established that they are entitled to relief under ORS 197.352(1) as a result of land use regulations enforced by the Commission or the department. Therefore, the department recommends that this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on June 22, 2007. OAR 125-145 0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation.